

33-78-I

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THE ATTORNEY GENERAL  
STATE HOUSE ANNEX  
25 CAPITOL STREET  
CONCORD, NEW HAMPSHIRE 03301-6397

ASSISTANT ATTORNEYS GENERAL  
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February 16, 1984

Martha A. Ginty, M.Ed., R.N.  
Executive Director  
N.H. Board of Nursing Education  
and Nurse Registration  
105 Loudon Road  
Concord, New Hampshire 03301

Dear Mrs. Ginty:

By letter dated June 1, 1983, you requested our advice concerning revisions in your rules.

When adopting rules, the Board should keep in mind the specific rulemaking requirements the legislature has established in RSA 326-B:4-a:

"The board shall adopt rules, pursuant to RSA 541-A, relative to:

I. The application procedure for any license issued under this chapter;

II. The qualifications of applicants in addition to those requirements set by statute;

III. Design and content of all forms required under this chapter;

IV. How an applicant shall be examined, including:



- (a) Time and place of examination;
- (b) Subjects to be tested;
- (c) Passing grade; and
- (d) Disposition of examination papers;

V. How a license shall be renewed;

VI. Ethical standards required to be met by each holder of a license issued under this chapter and how such license may be revoked for violation of these standards;

VII. The establishment of all fees required under this chapter;

VIII. Standards for nursing education programs;

IX. Procedures for the conduct of hearings consistent with the requirements of due process;

X. Functions of the executive director; and

XI. Other matters related to the proper administration of this chapter."

Any rules which you adopt must fall within one of the categories listed in this section.

In response to your first question, there is no need to repeat the definition of "practical nursing" and "professional nursing" included in RSA 326-B:2. In order to clarify the meaning of those terms, however, you should reference the definitions in the statute. In other words, you should state in your rules that practical nursing shall have the same meaning as stated in RSA 326-B:2, IV.

In response to your second question, should standards of nursing practice be included in the rules, it would be advisable to further define the standards that would be used as a basis for a disciplinary action under RSA 326-B:12. In doing so, you would be putting licensed nurses on notice as to the standards they are required to meet.

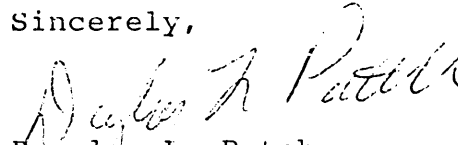
I can best answer your question concerning the difference between legal standards and professional standards by stating

that legal standards would be those either included in the statutes themselves or adopted under rulemaking authority of the Board. Professional standards, on the other hand, would most likely be those which were adopted by a professional association. They might be incorporated into law by reference but they would, at least initially, be standards that did not have the effect of law.

You may use American Nurses Association (ANA) standards as a basis for standards which the Board wishes to adopt as rules. If you do so, although you may adopt the ANA standards by reference, the better practice would be to review them and specifically adopt all relevant portions as state rules.

Finally, it should be noted that RSA 326-B:4-a requires the Board to adopt rules. It would therefore be in the Board's best interest to do so as soon as possible. I am available to assist you in any way possible.

Sincerely,

  
Douglas L. Patch  
Assistant Attorney General  
Division of Legal Counsel

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